



Administrative Policy  
**CONFLICT OF INTEREST**

AP No.	AP 2-22
Effective Date:	Upon Approval

**1. POLICY STATEMENT**

The City of Houston ("City") adopts this policy to aggregate or reference in one document many, but not necessarily all, of the laws, rules, regulations and documents that establish and govern the standards of conduct relating to actual or apparent conflicts of interest applicable to its official's and employee's actions.

**2. POLICY PURPOSE**

The purpose if this policy is to:

- 2.1 Establish a citywide policy that contains a consolidated listing of the primary sources of various ethical, standards of conduct, and conflicts of interest provisions applicable to Elected City Officials and employees which can be found in an assortment of governing documents, including but not limited to federal law (e.g. 2 C.F.R. Part 200), state law, the City's Charter, the City Code, City administrative policies/procedures and executive orders, and departmental policies and procedures;
- 2.2 Promote consistent compliance by Elected City Officials and employees and enforcement of these ethical standards by City Department directors or their designees;
- 2.3 Further inform Elected City Officials and employees of the ethical standards in an effort to eliminate actual conflicts of interest and the appearance thereof;
- 2.4 Increase Elected City Officials' and employees' awareness of the heightened standard of accountability expected of them in their service to the City and its residents;
- 2.5 Establish how conflicts of interest will be handled, including written disclosures and notifications and consequences in case of failure to disclose, and reviews or investigations of alleged conflicts;
- 2.6 Memorialize, in a single document, how the City satisfies the requirement to maintain written conduct standards and standards governing the actions of its employees engaged in the selection, award and administration of contracts, such as the requirements set forth in 24 C.F.R. § 570.489(g) and (h) and 2 C.F.R. § 200.318.
- 2.7 This policy is not intended to supersede or limit applicable federal, state, or local statutes or regulations.

**3. SCOPE**

This policy applies to all City employees and City departments and divisions, including the office of the Mayor, as well as to all City elected and appointed officials, such as the City Controller, Council Members, and members of any City Board or Commission. This policy also applies to conflicts that arise in or outside of the context of a procurement.

**4. DEFINITIONS**

Apparent conflict or like terms (e.g. appearance of a conflict): when the circumstances are such that a

Approved:

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Date Approved:

12/22/2021

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reasonable person with knowledge of the relevant facts would question the impartiality of the City employee or Elected City Official's conduct, participation in a program, or receipt of a benefit. Depending on the facts, circumstances and applicable law, an apparent conflict may include, for example: the offer, acceptance, or receipt of event tickets, meals, or giveaways to an employee-affiliated or Elected City Official-affiliated organization; or any other situation in which financial or other personal considerations or interests may appear to compromise or bias professional judgement or objectivity.

2 C.F.R. Part 200: the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at Title 2 of the Code of Federal Regulations Part 200, as amended from time to time.

City Code: ordinances designated to be in the Code of Ordinances, City of Houston, Texas.

City employee: any person who receives compensation as an employee of the City, including interns, temporary employees and other personnel, regardless of civil service status, classification, contract employee status, pay grade, or full-time or part-time status. For purposes of this policy, the term includes members of City boards and commissions..

Elected City Official: has the meaning ascribed in Section 18-2 of the City Code, as amended from time to time.

Immediate Family: means and includes, whether by blood, marriage, or adoption, the spouse, parent (including a stepparent), child (including a stepchild), sibling (including a stepsibling), grandparent, grandchild, and in-laws of an Elected City Official or City employee.

Public Servant: has the meaning ascribed to the term in Section 1.07 of the Texas Penal Code, as amended from time to time. For purposes of this Executive Order, the term also includes City employees and Elected City Officials.

## **5. CITY CHARTER AND STATE OF TEXAS LAW**

5.1 Texas state law regulates and prohibits Public Servants from engaging in certain conduct and prescribes various conflicts of interest standards. Relevant provisions applicable to Public Servants can be found in Chapters 171 and 176 of the Local Government Code and Chapter 36 of the Penal Code. Public Servants are expected to adhere to and must comply with these state and local laws, as applicable.

5.2 For information regarding some of the restrictions applicable to City Council members and the consequences for violations of these restrictions, see Art VII. Secs. 4 and 6 of the City Charter.

## **6. CITY CODE**

Standards of conduct:

6.1 City employees and Elected City Officials: The City Code establishes standards of conduct with which Public Servants must comply, and in some instances, the process for disciplinary action where such standards are not adhered to. These include, but are not limited to:

6.1.1 Council Member Code of Conduct. Rule 6 of the Council Rules (found in Section 2-2 of the City Code) establishes the rules of conduct for City Council members and the accompanying disciplinary procedures.

6.1.2 Chapter 18 of the City Code, Ethics and Financial Disclosure.

6.1.3 Section 18-1 of the City Code sets forth the City's policy statement regarding how Elected City Officials shall act and conduct themselves, both inside and outside the City's service, so as to give no occasion for distrust of their integrity, credibility, or devotion to the best interests of the

City and the public trust that it holds.

- 6.1.4 City Official Standards of Conduct. Section 18-3 of the City Code includes the standards of conduct and a list of behaviors in which it would be unlawful for a city official (as defined in section 18-1 of the City Code) to engage.
  - 6.1.5 City Official Disclosure Requirements. Section 18-5 of the City Code contains disclosure requirements for Elected City Officials relating to interest in property and Section 18-21 et. seq. addresses other financial disclosures Elected City Officials are required to make.
  - 6.1.6 Revolving Door. Section 18-88 of the City Code also prohibits certain actions by former city officials (as defined in section 18-1 of the City Code).
  - 6.1.7 Employee Standards of Conduct. Section 14-183 of the City Code establishes the standards of conduct for civil service City employees and noncivil service City employees and Sections 14-182 and 14-183 of the City Code, along with City Administrative Procedure 3-7, Positive Corrective Action Program, provide for corrective action to be applied for violation of such standards.
  - 6.1.8 Outside Employment. Sections 14-173 and 14-222 of the City Code establish the parameters for outside employment for City employees. Procedures for evaluating outside employment requests, including considerations for whether the outside employment will place the employee in a conflict of interest with the City, can be found in Administrative Procedure 3-10.
- 6.2 City Contractors. In addition to other state and federal laws and regulations or contractual provisions applicable to City contractors, the City Code also prohibits certain contractor activity.
- 6.2.1 The City Code prohibits contractors (as defined in Section 18-2 of the City Code) from making certain contributions to a candidate (as defined in Section 18-2 of the City Code).
  - 6.2.2 Article VII of Chapter 15 establishes the City's debarment rules. Grounds for debarment in Section 15-103 include conduct that may directly or inherently involve conflicts of interest, such as failing to comply with state, federal, local laws or regulations applicable to the contract or a conviction or civil adjudication of the contractor or the contractor's officers or owners of a criminal offense or civil misconduct in connection with the contractor's business that evidences a lack of business integrity or business honesty, including without limitation, violations of laws relating to the obtaining of or performing of public contracts.

## 7. CONTRACTS

- 7.1 In addition to other requirements listed above, the Section 15-1(a) of the City Code states that it is "against the public policy of the city as expressed by the city council for any employee of the city to bid on or to be awarded any contract being let by the city or to be pecuniarily interested, directly or indirectly, in any contract let by the city, or in any work done by the city, or in any matter wherein the rights or liabilities of the city are or may be involved." Chapter 15 of the City Code further regulates City employees' conduct with respect to other interests in City bids and contracts and the procurement process. These prohibitions can be found in:
- 7.1.1 Chapter 15 of the City Code, Contracts.
  - 7.1.2 Section 15-1 of the City Code expresses the public policy of the City as it relates to contracting and interests in contracts let by the City.
  - 7.1.3 City Code Section 15-55, Conflicts of interest, authorizes the Chief Procurement Officer "to establish a process for addressing conflicts of interest in the procurement and contracting process." This City Code provision (as of this Policy's Effective Date) also states: "Anyone

involved in procurement is required to disclose any conflict or appearance of conflict before participating in a procurement process.”

7.1.4 Section 15-56 also addresses the ethical standards, values and guiding principles applicable to procurement personnel and others involved in a procurement.

7.2 Where appropriate, many City procurements also contain language regarding a “no contact period.” The “no contact period” language generally explains that during the City procurement process (e.g. the no contact period), proposer(s) and any person acting on the proposer(s)'s behalf are prohibited from attempting to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City, their families or staff members.

## **8. GIFTS**

The City also maintains a policy regulating a City employee's acceptance of gifts. See City of Houston Executive Order Regarding Gifts No. 1-28 Revised effective January 4, 2011, as amended from time to time.

## **9. FEDERAL AWARDS**

9.1 Section 15-41 of the City Code states: “It is the policy of the city that all procurements shall be made in accordance with relevant state and federal law, as well as the charter and this Code.” Where applicable, the City, as a non-federal entity, must comply with the federal awards provisions of 2 C.F.R. Part 200 and other federal and state ethical and conflict of interest provisions and regulations, such as disclosures to the federal awarding agency or pass-through entity regarding potential conflicts of interest, including without limitation, provisions, as applicable, in 2 C.F.R. §§ 200.101(b)(1), §§ 200.112-200.113, § 200.318(c)(1), 24 C.F.R. § 570.611, 24 C.F.R. § 92.356, 24 C.F.R. § 576.404, 24 C.F.R. § 574.625 and 10 T.A.C. § 7.26.

9.2 Federal Awards Conflicts of Interest Rules.

9.2.1 Each federal program regulated by a federal agency may have specific conflict of interest rules. For procurement and non-procurement conflicts of interest, a federal award will be subject to the applicable conflict of interest requirements of the federal awarding agency that is the source of the funding. Requirements set by various federal agencies may vary and the specific regulations with respect to the federal activity must be reviewed. Therefore, employees working on programs or projects funded by federal agencies should take care to review and understand the specific conflict of interest rules applicable to their activities.

### **Federal Awards Procurement Conflict of Interest Standard**

In accordance with 2. C.F.R. § 200.318(c)(1), no City employee, Elected City Official, or agent of the City may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. 2. C.F.R. § 200.318(c)(1) states: “Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her Immediate Family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.”

9.2.2 This policy does not attempt to specify every type of organizational conflict of interest. Organizational conflicts of interest may arise in situations not covered in these categories.

## **10. HANDLING CONFLICTS OF INTEREST**

10.1 Each Department Director or his/her designee (“Director”) shall be responsible for providing or arranging conflict of interest training as appropriate for departmental personnel and escalating conflicts

of interest to the City Legal Department. The Director shall also track training and conflict of interest information provided to his/her department personnel including maintaining lists of who attended training and the dates and times of such trainings, retaining conflict reminder emails sent city-wide or department-wide, and serving as the first point of contact for any personnel questions related to actual, perceived, or potential conflicts of interests.

- 10.2 All City employees and Elected City Officials have an obligation to avoid, neutralize or mitigate actual, potential, or perceived conflicts of interest, to, among other things, prevent any unfair competitive advantage or the existence of conflicting roles that might impair the performance of the federally funded contract or impact the integrity of the procurement process.
- 10.3 When an actual or apparent conflict of interest arises, the Department Director or Elected City Official must identify, disclose, and manage the conflict of interest in compliance with applicable laws, rules, regulations, City Code, and this policy or any departmental policies or procedures consistent with this policy.
  - 10.3.1 Identify. When a City employee or Elected City Official becomes aware of an actual, perceived or apparent conflict of interest, the person must immediately notify his or her immediate supervisor (if applicable) and the City employee's Director. The Director shall notify the appropriate department personnel and escalate the matter to the City Attorney or designee ("City Attorney"). In the case of a procurement, the Director shall also notify the Strategic Procurement Division buyer responsible for the procurement and the Chief Procurement Officer. In the case of an Elected City Official, the Elected City Official shall notify the City Attorney.
  - 10.3.2 Review. Upon referral by the Director or Elected City Official (pursuant to section 10.3.1) of an actual, perceived or apparent conflict of interest, the City Attorney shall review the referral and all related facts and circumstances and determine whether an actual or apparent conflict of interest exists under the applicable laws, rules and regulations. The City Legal Department shall report its determination and recommend further action, if any, to the referring Director and the involved City employee or Elected City Official.
  - 10.3.3 Disclose. If required by applicable laws, rules and regulations, the Department Director or Elected City Official must disclose any actual or potential conflict of interest in accordance with such applicable laws, rules and regulations.
  - 10.3.4 Manage. The Elected City Official or Director, in consultation with the City Attorney, should identify and document the action(s) taken by the City, City employee or Elected City Official to address the conflict of interest, including but not limited to elimination of the conflict of interest, recusal or other mitigation of the conflict of interest, determination by the City Attorney that a conflict does not exist or, if applicable, the request and receipt of a written waiver or exception of the conflict of interest from the applicable authority (e.g. Department Director, federal awarding agency, etc.). The City employee or Elected City Official with an actual or apparent conflict of interest, shall not proceed with or receive any benefit funded by federal or local dollars or supported by federal dollars unless and until the conflict of interest is determined not to exist by the City Attorney, is mitigated to the satisfaction of the Director responsible for the funds, or is the subject of a waiver/exception approved by the appropriate authority.

See Attachment B Conflict of Interest Compliance Notification Sample

- 10.4 Any compliance investigation, determination, referrals, reports, complaints and all associated materials related to the review of a conflict of interest matter under this policy shall be considered confidential to the extent permitted by law.

## 11. CONFLICT OF INTEREST TRAINING

- 11.1 City department directors are encouraged to raise awareness and provide training and education to Elected City Officials and City employees about this policy and conflicts of interest rules applicable to the areas in which the employees perform their job duties.
- 11.2 Elected City Officials and City employees must attend conflict of interest training at least annually. The City Legal Department will be responsible for preparing a training presentation, which may be completed online. Training by third parties may also satisfy the annual conflict of interest training requirement. Departments may, in consultation with the City Attorney, provide other training opportunities to satisfy the annual training requirement.
- 11.3 Elected City Officials and City employees who complete a conflict of interest training program must record a certification of attendance or sign a statement indicating the date the conflict of interest training program was completed and provide this documentation to the City employee's Director, who shall maintain the documentation for at least 3 years, unless a longer period is required by law or the federal awarding agency.

## **12. POLICY COMPLIANCE**

- 12.1 Violations of this policy may be reported to the appropriate authority, including but not limited to the Office of Inspector General, as prescribed by Executive Order 1-39.
- 12.2 Violations of this policy may subject the offending City employee to corrective action up to and including indefinite suspension or termination in accordance with City policies and procedures (including but not limited to A.P. 3-7, Positive Corrective Action), and certain violations by any person may also lead to a referral to the appropriate authority for further investigation or criminal prosecution, as appropriate, for violations of local, state or federal laws.
- 12.3 Violation of this policy, failure to make good faith efforts to avoid a conflict of interest, or any responsibility for creating a conflict of interest situation on the part of City contractors, developers, grantees, and subrecipients (including their employees or agents) may, in accordance with the developer/grantee/contractor/subrecipient's agreement and applicable law, result in the City suspending payment, terminating the agreement, requiring reimbursement by the developer, grantee, vendor or subrecipient, or debaring the developer/grantee/vendor/subrecipient.
- 12.4 This policy does not relieve any Elected City Official or City employee of any duty to comply with state and federal law, the City Charter, City Code, City executive order, City administrative procedure, Mayor's policy, or a City department policy regarding misconduct or the reporting of misconduct.

## **13. APPENDICES**

- Attachment A – Conflict of Interest Questionnaire SAMPLE (which may be modified, as appropriate, in consultation with the City Attorney or designee)
- Attachment B – Conflict of Interest Compliance Notification SAMPLE (which may be modified, as appropriate, in consultation with the City Attorney or designee)

## **14. POLICY SPONSOR**

**Department:** Legal Department